

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

HUGHETTE CRUMPLER,	:	Case No. 1:02cv131
Plaintiff	:	Judge Susan J. Dlott
v.	:	
TELXON CORPORATION et al.	:	
Defendants,	:	JOINT MOTION TO STRIKE
v.	:	DEFENDANTS' MEMORANDUM IN
JOHN W. PAXTON, SR.,	:	OPPOSITION TO MOTIONS FOR
Third-Party Defendant.	:	SUMMARY JUDGMENT OF
	:	PLAINTIFF HUGHETTE CRUMPLER
	:	AND THIRD-PARTY DEFENDANT
	:	JOHN W. PAXTON, SR.

Pursuant to this Court's standing Order relating to pretrial procedure, Plaintiff Hughette Crumpler and Third-Party Defendant John W. Paxton, Sr. respectfully move the Court to strike the "Memorandum in Support of Telxon Corporation and Symbol Technologies, Inc.'s Memorandum in Opposition to Motions for Summary Judgment of John W. Paxton, Sr. and Hughette Crumpler" [Doc. 39] because: (a) the 63-page brief violates the Court's well-established rule for page limits on briefs and memoranda, and Telxon and Symbol never requested an exemption from the Court or opposing counsel; (b) Telxon and Symbol failed to file and serve any of the attachments to the Memorandum, including at least 11 separate Declarations referenced in their brief; and (c) Telxon and Symbol filed their brief out of time.

A memorandum of law in support of this motion is attached.

Respectfully submitted,

s/ Robert A. McMahon

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MEMORANDUM IN SUPPORT

This Court should strike Telxon and Symbol's Memorandum in Opposition to the Motions for Summary Judgment filed by Crumpler and Paxton for each of the following reasons:

A. Their 63-Page Brief Grossly Violates the Page Limitations Set by this Court

Telxon and Symbol completely and purposefully disregarded this Court's rules in filing a 63-page memorandum. This Court's 20-page limit is well-established and a matter of public record. Even if ignorance were an excuse, Defendants' counsel cannot possibly feign ignorance of the rule because Paxton's counsel previously informed them of the page limitation. Crumpler and Paxton spent hours of time and their clients' money to comply with the rule. Telxon and Symbol's purposeful disregard of the rule must be sanctioned.

B. Telxon and Symbol Failed to File and Serve any of the Attachments to the Memorandum, Including at Least 11 Declarations.

Telxon and Symbol's Memorandum refers to multiple attachments, including at least 11 "Declarations."¹ But they failed to file any of those documents with the Court, as confirmed by the case docket and the electronically filed version of their Memorandum (including the certificate of service). Defendants' failure to comply with the rules mandates that their Memorandum be stricken.

C. Telxon and Symbol Filed their Memorandum Late.

On August 22, 2003, the Court denied Telxon and Symbol's request for a 6-week extension but allowed—as consented to by Crumpler and Paxton—two additional weeks (until September 8th) to respond to Crumpler and Paxton's Motions for Summary Judgment. On September 8th, the day their response was due, Defendants' attorney, Drew Carson, telephoned counsel for Crumpler and Paxton to request additional time. Mr. Carson assured counsel that

¹ A number of the Declarations appear to be from individuals that Telxon and Symbol never disclosed as potential witnesses, or even individuals with knowledge.

Telxon and Symbol would file their memorandum by Wednesday, September 10th.² As a matter of professional courtesy, Crumpler and Paxton reluctantly agreed, assuming this Court agreed as well. Apparently Telxon and Symbol never sought or obtained this Court's consent to the additional time, as confirmed by the case docket. This unilateral violation of the Court's order granting the extension until September 8th alone warrants striking Defendants' Memorandum.

WHEREFORE, Plaintiff Hughetta Crumpler and Third-Party Defendant John W. Paxton, Sr. request that the Court enter an order striking the Memorandum in Support of Telxon Corporation and Symbol Technologies, Inc.'s Memorandum in Opposition to Motions for Summary Judgment of John W. Paxton, Sr. and Hughetta Crumpler [Doc. 39].

Respectfully submitted,

s/ Robert A. McMahon

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² Mr. Carson conveniently forgot to mention that Telxon and Symbol intended to file a 63-page brief without the attachments.

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2003, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Drew A. Carson and James A. Wertheim, Goodman Weiss Miller LLP 100 Erieview Plaza, 27th Floor, Cleveland, Ohio 44114-188; and I hereby certify that I have faxed the document to the same counsel and Michael A. Manzler, Esq., Dinsmore & Shohl LLP 1900 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202.

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